IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8721 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C J THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8721 of 1999

MR BA VAISHNAV for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1-3

M/S PATEL ADVOCATES for Respondent No. 1

MRS SR BAROT FOR NANAVATY ADVOCATES for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/2003

ORAL JUDGEMENT

In the matter of Tarlochan Dev Sharma v. State

of Punjab reported in 2001 (6) SCC 260 it has been observed by the Supreme Court as under in para 15 of the judgment.

15. It is interesting to view the present-day bureaucrat-politician relationship scenario:

"A bureaucratic apparatus is a means of attaining the goals prescribed by the political leaders at the top. Like Alladin's lamp, it serves the interest of whosoever wields it. Those at the helm of affairs exercise apical dominance by dint of their political legitimacy... The Ministers make strategic decisions. The officers provide trucks, petrol and drivers. They give march orders. The Minister tells them where to go. The officers have to act upon instructions from above without creating a fuss about it."

("Effectiveness of Bureaucracy", The Indian Journal of Public Administration, April-June 2000, at p.165)

In the matter of M.S. Grewal v. Deep Chand Sood reported in 2001 (8) SCC 151 it has been observed by the Supreme Court as under in para 27 and 28 of the judgment.

27. The decision of this Court in D.K. Basu v. State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed: (SCC p. 439, para 45)

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long-drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective

remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

#. Heard learned advcoate Mr.B.A.Vaishnav on behalf of the petitioner and learned AGP Mr.N.D.Gohil for respondents - State Authorities, so also, learned advocate Mrs.S.R.Barot for M/s Nanavaty Advocates on behalf of the respondent No.4.

#. The brief facts giving rise to the present petition are as under :

The petitioner is a retired employee who has been retired from service with effect from 30th April, 1992 after rendering service for a period of 39 years and 3 months and 17 days. The order of retirement dated 29th April, 1992 is produced on record which is at Annexure-A at page.26, was subject to continuing of departmental inquiry. This order of retirement and continuing the departmental inquiry was passed under Rule 189-A of the Bombay Civil Services Rules ["BCSR" for short]. It is necessary to mention that the subject matter of the inquiry was pertaining to the charges of the period from 3rd January, 1986 to 18th January, 1988 and penalty of reduction of pension for a period of two years, was imposed by the respondent vide order dated 9th April, 1996 which was challenged by the petitioner by way of Appeal before the Hon'ble Chief Minister. However,

learned advocate Mr.Vaishnav has made it clear that this appeal is pending before the Hon'ble Chief Minister. It is case of the petitioner that after his retirement on superannuation, he was reemployed as an Administrator for the period from 16th May, 1992 and 31st October, 1993. Thereafter, the Collector Junagadh on 1st July, 1994 which is at page.31 addressed a letter to the Nagarpalika that pension case of the petitioner has to be finalised by them keeping in mind that the petitioner reemployed till 30th October, 1993 and therefore, his pay during re-employment was to be fixed in accordance with Rule 330 of the BCSR and there was some amount of Rs.65,000/-was to be given by the petitioner and therefore, he could not have drawn the pay and pension for the period from 1st May, 1992 to 30th October, 1993 and therefore, pension could be payable only from 1st November, 1993 and pension case therefore, should be finalised thereafter and be sent to the pension Office. According to the petitioner, pension case therefore was sent by the Director of the Municipalities to the Collector as no one was certain as to who would finalise the case. Ultimately, the Revenue Department has addressed a letter [see Annexure-D page.38 of petition] to the Director of Municipalities directing to do the needful in the matter as per the relevant rules and to pay to the petitioner provisional gratuity. Again by communication dated 28th May, 1995 the Revenue Department has taken strong exception to non finalisation of pension case. Thereafter, on 30th April, 1996, the Director of Municipalities opined that it was opined that it was the Collector who had to give benefit of pension and therefore the Collector should do the needful in the matter as it was that office which was competent to do so and accordingly to pay the pensionary benefits to the petitioner. Thereafter, on 30th September, 1996 the Collector addressed communication to the Urban Development and Urban Housing Department that certain audit objections of the year 1992-93 were pending against the petitioner which is at Annexure-H page.48 and the Collector has requested the Urban Development and Urban Housing Department to do the needful in the matter, Thereafter, on 23rd September, 1996 the Collector has passed the order to the effect that the petitioner should have drawn his full pay and salary as per Rule 330 of the BCSR during the period of re-employment and hence, till the question is decided, the petitioner shall be paid the pension as if he retired on 1st November, 1993 and pension fixation will be decided after recovery of Rs.65,000/- as per Annexure-I which is at page.59. Similarly, Veraval and Patan Joint Nagar Palika has issued letter dated 17th September, 1996 to the petitioner that certain recoveries were to be made and

only thereafter pension case would be finalised which is at page.62 - Annexure-K. Thereafter, further reply to the representation was received from the Collector by the petitioner that pension can be paid only after recovery of the amounts so purported to be recovered. Thereafter, the Revenue Department wrote a letter on 6th January, 1998 that unless the petitioner is agreed to pay the dues of the Department then only the Department will pay pension and gratuity to the petitioner, otherwise, the Department will pay pension and amount of gratuity to the petitioner as per the order which is produced at Annexure-N at page.71. Thereafter, on 17th march, 1999 the Collector modified the earlier order dated 23rd September, 1996 and stated that provisional pension ought to be paid to the petitioner. Therefore, according to the petitioner, the stand of the Collector and the Nagarpalika is, unless recovery as specified in the audit paras are recovered, no payment for pensionary benefits and gratuity can be made to the petitioner. Learned advocate Mr.Vaishnav submitted that after filing of the petition, the Revenue Department has issued No Due Certificate and No Even Certificate on 27th July, 2000 and thereafter also, retirement benefits are not paid till date to the petitioner.

#. On behalf of the respondent No.4, affidavit-in-reply has been filed. The contentions raised by the respondent No.4 that the petitioner has not come with the clean hands and the Nagarpalika is having audit remarks and audit objection which are raised by the Assistant Examiner, Local Fund, Junagadh wherein the petitioner has been shown to have involved in the irregularity namely that he has not deposited house rent of the quarter belonging to Nagarpalika a sum of Rs.13,440/-, for which, the Nagarpalika had already informed on 8.7.1995 by letter No.1128 by the Account Department of the Nagarpalika and that the transactions pertaining to the Audit Year 1992-93 as per the audit year. The respondent No.4 has also raised contention that the petitioner has also entered into an agreement with the contractor and as per the rules of Nagarpalika, 8 % of stamp duty is to be levied from the contractor for the houses situate in the area of Nagarpalika. But instead of that the present petitioner has prepared an agrement on the stamp paper of Rs.10/- only without collecting the proper stamp duty and due to this act of the petitioner, the amount worth Rs.11,110/- towards the amount of stamp duty could not be deposited in the account of State Government and therefore, due to the act of the petitioner, the Government has lost Rs.11,110/- towards the stamp duty. Out of this total amount of Rs.3,483/- was recovered but

still the amount of Rs.7,526/- is yet to be required to be recovered. Therefore, according to the respondent No.4, the petitioner was quite negligent in performing his duty. The respondent No.4 further contended that while working as Administrator of the Nagarpalika , at that relevant time, the petitioner was negligent in the recovery of the amount of stamp duty for worth Rs.30,461/- from the contractor and therefore, at the time of audit also the concerned officer has made Audit Note in para-30, that there is less amount deposited worth Rs.30,461/- towards the stamp duty by the petitioner and he is the only person who was responsible for collecting the less amount towards the stamp duty and therefore, it is required to be recovered from the petitioner for the Audit year 1993-94. The respondent No.4 also alleged against the petitioner that the petitioner was not performing his duty in proper and active manner as not giving 24 shops belong to the Nagarpalika which was required to be given on rent and that is how loss worth Rs.57,600/- towards amount of rent for which the Audit Department has made a request to hold that the petitioner should be held personally liable for not giving such shops on rental basis and that is how the petitioner being negligent in performing his duty and Nagarpalika has lost his rent. The respondent No.4 has also pointed out that as per the Audit Note for the year 1993-94, as per the condition No.9 of the Auction, 33 % of the amount is required to be taken by the Nagarpalika as an amount of "Sukhadi" but the present petitioner has taken on his own Rs.1,111/- as transfer fees by passing resolution dated 17.3.1993 vide Resolution No.4143 and transferred the shops which caused financial loss of Rs.2,27,601/- towards the "Sukhadhi". The respondent No.4 has also pointed out that the petitioner had visited the office of the Central Government, New Delhi for the works of Water Supply Department and for that the petitioner had withdrawn a sum of Rs.65,000/- from the Nagarpalika and no account or bill has been produced towards the said amount but subsequently the Nagarpalika has asked to produce all the documents pertaining to the amount but the petitioner could not produce any bill or document of Rs.18,800/- and therefore, said amount on the personal account of the petitioner. The respondent No.4 has also pointed out that it is not clear that the Collector has number of time inquired about that how much amount is yet to be required to be recovered from the petitioner towards his irregularities and therefore, the petitioner was also informed the Collector vide letter dated 5.12.2001 and 20.12.2001 that Nagarpalika is entitled to recover Rs.3,55,518.40 ps from the petitioner and even though the Collector is aware about such fact

that the Deputy Secretary, Revenue Department has given no due certificate in favour of the petitioner under which the petitioner is claiming the amount of gratuity and pension, which according to the respondent No.4, nothing but committing further irregularities on the Nagarpalika and it is nothing but encouraging such type of dishonesty by releasing the amount of gratuity and pension under the shelter of No Due Certificate issued by the Deputy Secretary, Revenue Department and therefore, the petitioner is not entitled to get his gratuity and pension as well as the terminal benefits in the facts and circumstances mentioned in the reply of the respondent No.4. It is lastly contended that the Nagarpalika has not withheld the amount of terminal benefits of the petitioner but as the Audit Department has raised an objection in which the petitioner has been found to have involved in some of the irregularities committed by him and due to his negligence, the Nagarpalika has suffered great financial loss, therefore, in this event, the State Government should not have granted No Due Certificate or No Inquiry Certificate dated 27th August, 2000 in favour of the present petitioner without satisfying the query raised by the Nagarpalika, Local Fund, Junagadh for recovering the amount sought to be recovered from the petitioner. Therefore, according to the Nagarpalika, the petitioner is not entitled to any relief as prayed for in the present petition.

#. It is necessary to note that this affidavit-in-reply filed by the respondent No.4 who is the Chief Officer Mr.Amrish C. Acharya of Veraval - Patan Joint Nagarpalika. However, considering the contents and the manner in which the reply is drafted criticising the action of the State Government taken at the level of the Deputy Secretary of Revenue Department, it gives impression that the Chief Officer of the Nagarpalika is above the State Government. It impression which could not be ignored at this juncture on perusal of the reply of the respondent No.4 that it is clear intention of the Nagarpalika that by any reason the petitioner should not get his terminal benefits unless the petitioner will satisfy their demands of recovery. This Court fail to understand how this reply has been drafted by the Chief Officer giving answer to the petition against the claim of the petitioner about his terminal benefits. The Chief Officer has challenged the decision and action of the Deputy Secretary of the Revenue Department who has issued no due certificate and no event or inquiry certificate to the petitioner. It may also be noted that the State Government has not filed any reply countering the claim of the petitioner.

#. In the present petition, Rule has been issued by this Court on 8th December, 1999, returnable on 29th December, 1999. The prayer made by the petitioner in the present petition in para-2[F], according to the petitioner, it is shown how much amount is entitled after retirement, which is quoted as under :

[i] Rs.58,800/- These amounts are due to the petitioner as Pensionary Benefits for the period from 1.5.92 to 31.10.93 for which the period the authorities are refusing to pay pension on the ground that fixation for the said period had yet to be done in accordance with Rule 330 of the BCSR.

[ii] Rs.60,000/- As Gratuity Amounts together with interest.

[iii] Rs.2,70,000/- Commuted Pension of 15 years from 1.5.1992.

[iv] Rs.2040/- Refund of amount of Group Insurance which the petitioner continued to pay even after retirement.

[v] Rs.6000/- Leave Travel Concession for the Block of 1992-95.

[vi] Rs.2000/- Difference due after payment of Rs.45,144 made on 21.11.1998 as the same is made on the basis of Basic Pay of Rs.3300/- and not Rs.3400/- together with interest for delayed payment.

[vii] Rs.5000/- TA for travelling to Home Town on retirement.

[viii] Rs.8250/- HRA from 22.1.1991 to 31.10.1993.

The petitioner states that even the provisional pension even according to the date they have fixed as 1.11.1993 was deposited with the treasury only on 5.5.1999 i.e. after 6 years. The amount of interest on the said amount of Rs.2,97,239 would be substantial and hence, the petitioner would be entitled interest on the said

amount also.

The petitioner submits that the total dues would therefore approximately work out to be Rs.3,53,290 or atleast Rs.4 lacs and therefore, withholding of such amounts is illegal and arbitrary and therefore, the action of the withholding pensionary benefits must be deprecated."

In view of above calculation, the total amount comes to Rs.3,53,290/- or say atleast Rs.4,00,000/- lakhs which has been withheld by the respondents Nagarpalika for more than 11 years and if re-employment period is calculated, considered and included considering the last date 31st October, 1993, for more than ten years.

#. It may be noted at this juncture that pertinent following queries posed to the learned advocate Mrs.S.R.Barot appearing for the respondent No.4 by this Court,

[i] Whatever averments made in the reply alleging irregularities committed by the petitioner, which ultimately caused huge financial loss to the Nagarpalika, any chargesheet has been served on the petitioner prior to retirement;

[ii] In respect of any of the allegations, whether any departmental inquiry has been initiated against the petitioner for the said so called and alleged irregularities and negligence on the part of the petitioner; and

[iii] Whether any show cause notice has been served on the petitioner prior to alleging the charge of negligence or irregularities against the petitioner ?

It requires to be recorded that in response to all three queries, learned advocate Mrs.S.R.Barot could not reply any of the question raised by this Court. Therefore, it becomes clear that these are the allegations made by the respondent No.4 in the reply but for that, no steps have been taken by the respondent No.4 till the petitioner has retired from service. From the perusal of the reply filed by the respondent No.4, it

transpires that even no show cause notice was served prior to the retirement of the petitioner that Nagarpalika is entitled to recover this amount from the petitioner. Therefore, merely on the basis of the allegation, the respondent No.4 is not entitled to recover any amount from the petitioner unless the respondent No.4 establishes and justify by holding departmental inquiry that the petitioner remained negligence and committed irregularities as alleged, has been found to have been committed by the petitioner. So long that procedure is not followed by the respondent No.4, according to my opinion, the respondent No.4 is not entitled to recover any amount from the terminal benefits of the petitioner. Therefore, decision of the respondent No.4 withholding the amount of terminal benefits, is illegal and contrary to the principles of natural justice. The petitioner is entitled to retirement benefits including the pension and gratuity as well as other service benefits a moment he retired from service. In the present petition, it is made clear by the learned advocate Mr.Vaishnav that except the Appeal filed by the petitioner to the Hon'ble Chief Minister against the order dated 9th April, 1996, wherein, for a period of two years, a reduction of pension has been imposed by the respondents. But that order of reduction in pension is not challenged by the petitioner in the present petition. However, that appeal is pending before the Hon'ble Chief Minister. Therefore, when the petitioner has already retired and prior to retirement, no chargesheet and no show cause notice and no departmental inquiry initiated in respect of alleged misconduct as raised in the reply by the respondent No.4. In above view of the matter, according to my opinion, the respondent No.4 is not entitled to withhold any retirement benefits of the petitioner including the pension and gratuity.

#. It is settled law on the aspect that after retirement, the employee is entitled to retirement benefits as a matter of right unless it has been withheld legally by the department as permissible under the law. The concept of the pension has been considered by the Apex Court in case of KERALA STATE ROAD TRANSPORT CORPORATION V. K.O. VARGHESE reported in 2003 Lab.I.C. 2042. The relevant observations made by the Apex Court in aforesaid decision in para-12 and 13 are reproduced as under :

"12. Before we deal with their respective contentions, it is necessary to appreciate that concept of pension. There are different classes of pensions and different conditions govern their

grant. it is almost in the nature of deferred compensation for services rendered. There is a definition of pension in Article 366 [17] of the Constitution of India, 1950 [in short the "Constitution"], but the definition is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life.

13. A political society which has goal to set up a welfare State, would introduce and has, in fact, introduced as a welfare measure wherein the retiral benefit is grounded on consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. But, the evolving concept of social security is a later day development, and this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether changes were necessary in the system established by the operative 1834 Act. The Report of the Commission is known as "Northoote - Trevelyan Report". The Report was pungent in its criticism when it says that : "in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducement to the parents and friends of sickly youth to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill-health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system [See Gerald Rhodes Public Sector Pensions, pp.18-19]."

8. The law on the question is settled that after retirement of employee his terminal benefit including pnesion and gratuity cannot be withheld and adjsuted against any alleged claim of department which was not decided in accordance with law. Similarly in case of unreasonable and culpable delay by department in making payments of terminal benefits employee concerned entilted penal interest upon such amount from due date. The

relevant law as decided by Apex Court in certain cases which are relevant, important paras of such decisions are quoted from them as under.

In the matter of Som Prakash v. Union of India reported in AIR 1981 SC 212 it has been observed by the Supreme Court as under.

Held that the liability for the payment of full pension to the petitioner was that of Burmah Shell, but, by virtue of Sections 3 and 4 of the Act of 1976, all the assets and liabilities vested in the Central Government and thereafter, in the respondent Bharat Petroleum Corporation, Section 10 relates to provident fund, superannuation, welfare fund and the like. The Corporation made provision for the rights and interests of the beneficiaries of the Trust established by Burmah Shell for the benefit of the person employed by it. Section 10 (1) puts this matter beyond doubt. This obligation of the Corporation is a statutory one and having regard to the provisions of Section 11, it cannot be affected by any instrument or decree or order. The statutory continuation of a pre-existing liability to pay pension, provident fund or gratuity, cannot be avoided having regard to Section 10. Under Section 12 of the Act of 1952 the total quantum of benefits in the nature of old age pension, gratuity or provident fund, shall not be reduced by reason only of the liability of the employer for payment of contribution to the fund. Section 12 prevails over the Trust Deed. A similar result holds good even under the Gratuity Act. The expression "instrument" in Sec. 14 certainly covers a Trust Deed and, notwithstanding the deduction that may be sanctioned by the Trust Deed, the overriding effect of Section 14 preserves the pension and immunises it against any deduction attributable to the statutory payment of the provident fund. It is not open to the second respondent to deduct from the full pension any sum based upon Regn. 16 read with Regn. 13. If as a measure of reprisal or provoked by the drawal of gratuity, or by resort to legal authorities, discretionary, supplementary, pensionary benefit is struck off, it will cease to be bona fide or valid. The petitioner is entitled to his full pension of Rs. 165.99. Further, on appropriate representation by him, the Corporation shall consider the grant

or stoppage of the supplementary pensionary benefit on its merits.

In the matter of R. Kapur v. Director of Inspection reported in (1994) 6 SCC 589 it has been observed by the Supreme Court as under in para (8), (9), (10) and (11) of the judgment.

8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala v. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

9. The respondent has not entered appearance.

10. This Court in M. Padmanabhan Nair case has held as under:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A.

Thus, the civil appeal is allowed. However, there shall be no order as to costs.

In the matter of Vijay L. Mehrotra v. State of U.P. reported in 2000 AIR SCW 2678 it has been observed by the Supreme Court as under in para (4) and (5) of the judgment.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31st August, 1997 till the date of payments.

5. The appeal is allowed to the above extent.

In the matter of Gorakhpur University v. Shitla Prasad Nagendra reported in 2001 AIR SCW 2819 it has been observed by the Supreme Court as under in paras 2,3,4 and 5 of the judgment.

2. Since the appellant-University did not settle the first respondent's claim for terminal benefits including the fixation and disbursement of the pension, the first respondent filed C.M.W.P. No. 30428/97. The writ petition was opposed by the appellant-University contending that the first respondent, having not vacated the quarter held by him when he retired and within the permissible extended period, was liable for payment of penal rent in respect of such accommodation and that as a matter of fact the Finance Controller, Office of Directorate of Higher Education, U.P., who examined his pension papers, ordered on the recommendation of the University-authorities the adjustment of Rs. 3,20,638.04 from the amounts due towards the retiral benefits. Further, a sum of Rs. 64,441.54 was also ordered to be deducted from the Provident Fund amount due to first respondent. On a consideration of the respective claims of parties, a Division Bench of the Allahabad High Court by its order dated 17-8-1998, applying the principles laid down in

Som Prakash v. Union of India (AIR 1981 SC 212) and R.Kapur v.Director of Inspection (Painting and Publication) Income-Tax (1994) 6 SCC 589 overruled the objections of the University holding that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employee. The action of the University authorities to the contrary was held to be illegal and while allowing the claim of the first respondent, a direction came to be issued to pay the entire pension and provident fund etc. due to first respondent, with penal interest @ 18% within two months from the date of the order.

3. Aggrieved, the University authorities have come up before this Court. The learned senior counsel for the appellants contended that when the respondents did not vacate the official quarters even after retirement and rendered himself liable for penal rent for such unauthorised occupation, there is every justification in law to adjust the amounts due therefore to the University before settling and disbursing the terminal benefits and no exception could be taken for the move made on behalf of the University. It was contended further that unless certificate of 'no dues'or 'no liability' could be issued the question of finalising pension papers will not arise at any rate, as long as the claims relating to payment of penal rent remained unsettled. The decision in Daya Shankar Lal v. Vice-Chancellor, University of Allahabad, 1992 (1) UPLBEC 654 was relied upon to contend that the Division Bench in this case committed an error in taking a contra view. Reliance has also been placed on the decisions reported in Wazir Chand v. Union of India, 2000 Supp (1) JT (SC) 515 as against the decisions noticed by the Division Bench of the High Court while deciding the case on hand.

4. Per contra, the learned senior counsel appearing for the contesting respondents, while justifying the relief granted to his client, highlighted certain facts which, according to the learned counsel, were peculiar to the case on hand and the stand taken for the appellant-University both before the High Court and this Court is unreasonable, unjust and only

demonstrated an attitude of vindictiveness. The relevant facts so pointed out from the materials on records before us are that, every month the normal rent that was payable was being remitted continuously to the University and the same was being accepted without demur till 23-3-1996 when the quarter was vacated, that in spite of a request and application made, as per practice in vogue for the allotment of the quarter in the name of his son who is also in the employment of the appellant-University as Lecturer no orders were passed thereon, that there are resolutions of the University to waive penal rent and grant of such benefit to persons even as late as in 1996, showed that a different stand and treatment to the respondent alone constituted hostile discrimination, that it was unreasonable to charge also rates stipulated by the Government in the year 1998 in the case of the respondent who retired in 1990 and vacated in 1996 and that the appellant not only did not choose to take any action to get the respondent vacated in accordance with law but on the other hand acquiesced in the occupation by accepting regularly the normal rent. A grievance has also been made that no notice or opportunity was given before determining and fixing liability for the penal rent. It was also contended that apart from these facts demonstrating lack of bona fides in the appellant, the withholding of information about the dismissal of the appeal filed by it on 22-7-1996 in SLP (C) C.C. No. 329/96, against the earlier decision of a Division Bench reported in S.N.Mathur v.Gorakhpur University, Gorakhpur, 1996 (2) ESC 211 (All) taking the very same view as in the present case in respect of another employee of the appellant-University, indicated the unethical approach of the University and, therefore, this appeal is liable to be dismissed as of no merit.

5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan

Nair (1985) 1 SCC 429: (AIR 1985 SC 356 : 1985 Lab IC 664) and AIR 1981 SC 212 (supra). This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant-University on the decision reported in 2000 Suppl (1) JT (SC) 515 (supra) does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that inspite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily

> ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity of illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

9. It is also equally important that from the amount of gratuity also, law is not permitting to withhold same any amount if it is due in favour of the petitioner. The amount of gratuity even cannot be attached by the Department. Therefore, the retirement benefit which is available to the employee after retirement normally, unless law permitting the Department for withholding any amount of the employee from the retirement benefits. Then department is not entitled to withheld the said benefits. Looking to the facts of this case, the petitioner who has suffered for a period of ten to eleven years for getting the retirement benefits from the petitioner but unfortunately the situation was for the petitioner that he accepted re-employment as an Administrator for a period from 1st May, 1992 to 31st October, 1993, otherwise, the petitioner retired on 30th April, 1992. The due amount of the petitioner has been

withheld by the Department for a period of ten to eleven years without any justification and without any legal action. But in such circumstances, the Court has to consider the mental agony on the part of the petitioner who has to maintain the family after retirement in absence of the retirement benefits. At this stage, the hard realities which cannot be ignored that the retired employee has to maintain his family in absence of the retirement benefits when he become dependent on the family. In such circumstances, it is also necessary to note one important aspect that the Revenue Department has already issued no due and no event certificate on 27th July, 2000 in favour of the petitioner, even though, more than three years have passed, his retirement benefit has not been paid to the petitioner till date by the respondent Government. In absence of the reply from the State Government, it is not made clear that for what reason the retirement benefit has been withheld or held up by the State Government when the Revenue Department has already issued no due and no event certificate in favour of the petitioner on 27th July, 2000. It is also the relevant fact that atleast according to the calculation of the petitioner that total amount of Rs.4.00 lakhs which remained with the State Government and naturally the State Government has utilized this amount but that amount could not have been utilized by the petitioner. Therefore, the petitioner is entitled for interest upon the said amount as he remained without this amount for long period of ten to eleven years. The view on this issue taken by the Rajasthan High Court in case of Narain Lal v. State of Rajasthan and Ors. reported in 2003 II CLR 1018, wherein it is held that even after retirement also, if any recovery is remained to be recovered from the employee, then that cannot be recovered from the employee who has already retired, otherwise, it amounts to legal injury caused to such retired employee.

This question has recently been examined by the Rajasthan High court in the matter of Narain Lal v. State of Rajasthan and Ors. reported in 2003 II CLR 1018. It was a matter relating to recovery of the amount wrongly paid. The petitioner therein retired employee challenged recovery of the amount wrongly paid to him without any fault on his part. In view of such facts, it was held by the Rajasthan High Court that the payments wrongly made without any fault on the part of the employee, having retired, recovery from him will cause legal injury. It has also been held that a legal right has accrued to him and, therefore, after his retirement, no recovery can be ordered against the retired employee.

IN the said matter, the Rajasthan High Court has considered entire case law on this subject in para 9 to 15 and has observed as under in para 16, 17, 18 and 19:

"16. Thus, from the rulings of the Honourable Supreme Court as well as this Court just quoted above, it is clear that in case the court finds that any benefit was achieved by a person without there being any fault on his part in receiving such benefit, it would be just and proper to allow him to retain such benefit.

17. In the present case, the benefit of Rule 26-A of the RSR was given to the petitioner and such benefit was received by the petitioner without there being any fault on his part, but mistake was committed by the respondents and, therefore, in such circumstances, it would be just and proper to allow the petitioner to retain such benefits.

18. Apart from this, when the person to whom payment was wrongly made without there being any fault on his part and that person has retired, in such a case, after his retirement, to ask such person to pay amount already received would necessarily causes a legal injury to him as in the meanwhile he would have utilized that amount and, therefore, from this point of view also, it can easily be said that a legal right has accrued in favour of the petitioner and under Article 226 of the Constitution of India, this Court has power to grant consequential relief such as not to recover the amount from the person to whom it was wrongly paid without there being any fault on his part.

19. Thus, the above question formulated by this court is answered in the manner that the amount paid to the petitioner wrongly on his fixation after giving him benefit of Rule 26 of the RSR without any fault on the part of the petitioner cannot be permitted to be recovered from him.

For the reasons stated above, this writ petition filed by the petitioner is partly allowed and the impugned audit objection report (Annexure 3) issued by the Local Fund Audit Department is quashed and set aside and the respondents are restrained from recovering the

excess amount which was already paid to the petitioner."

Considering the facts of the present case and the decision of the Rajasthan High Court as aforesaid, I am of the opinion that the decision of the Rajasthan High Court is the answer to the second question and, therefore, according to my opinion, after the retirement of the petitioner, the respondents are not entitled to recover any amount from the petitioner, otherwise, it would amount to legal injury to the petitioner in respect of the legal right accrued in his favour.

10. At this stage, it is also relevant to note that petitioner who remained in service for period for more than 39 years in the employment of the respondents, who retired on 29th April, 1992 and therefore, why at the relevant time, the respondent No.4 has not initiated any inquiry against the petitioner and why no show cause notice is not given to the petitioner by the respondent No.4 at that relevant time. If the petitioner is permitted to retire by the respondent No.4 from service and during period of service, no action has been taken and as such, no conscious decision as to alleged misconduct as raised in the reply, nor contemplated by the respondent, then after retirement, the objections raised by the respondent No.4 against the petitioner. These are all objections which have been raised by the respondent No.4 against the petitioner in reply without having any proof by holding inquiry against the petitioner. Merely an allegation is not enough to deny the retirement benefits to the petitioner unless that allegation is required to be proved by the respondent No.4 against the petitioner. For that, no steps have been taken by the respondent No.4. Therefore, in light of these facts, according to my opinion, the petitioner is entitled to all the retirement benefits which are available to him in accordance with service rules and law from the respondent Department with interest.

11. In conclusion, considering above discussion, the present petition is allowed. It is directed to the respondent through the Secretary, Revenue Department of State of Gujarat to pay all the retirement benefits including pension, gratuity and other service benefits to the petitioner on the basis of no due and no event certificate dated 27th July, 2000 issued by the Revenue Department with 9 % interest from the due date on which the petitioner has been entitled to receive all the amount of retirement benefits from the respondent Department within three months from the date of receipt

of copy of this order.

Rule is made absolute with no order as to costs.

Date : 7.10.2003 [H.K.Rathod, J.]

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